IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 1322 of 2000

O.P(MV).NO.1655/1992 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI.

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APPELLANT/PETITIONER:

MOOSA, S/O. ALAVIKUTTY,
MALAPPURAM AMSOM, MELMURI DESOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON.

RESPONDENTS/RESPONDENTS:
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1. **A.K. UMMER, S/O. A.K. MUHAMMED,**
   ANDIKATTIL HOUSE, MELMURI (P.O),
   MALAPPURAM DISTRICT.
   (DRIVER OF LORRY NO. KLM 5458)

2. **P.P. KASSIM, S/O. IBRAHIM HAJI,**
   MADASSERI HOUSE, MELMURI POST,
   MALAPPURAM DISTRICT.
   (OWNER OF LORRY NO. KLM 5458).

3. **NEW INDIA ASSURANCE CO. LTD.,**
   BRANCH OFFICE, CATHOLIC CENTRE,
   O.P. HILL, MALAPPURAM,
   (INSURER OF LORRY NO. KLM 5458).

4. **MR. K. MUHAMMED, S/O. KUNHALI HAJI,**
   KADAKKARA HOUSE, PAPPINIPPARA POST,
   MANJERI, MALAPPURAM DISTRICT.
   (OWNER CUM DRIVER OF MOTOR CYCLE NO. KED 7155).

M.F.A. NO. 1322/2000:

5. ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, MANJERI (INSURER).

BY ADV. SRI.M.M.HUSAIN,
SRI.BABU S. NAIR,
SRI.ANCHAL C.VIJAYAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.1322 OF 2000

Dated 7th June, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident by which he sustained serious injuries while he was travelling as a pillion rider in a motor cycle driven by the fourth respondent. The lorry driven by the first respondent owned by the second respondent and insured by the third respondent hit the vehicle and the accident occurred. He claimed a compensation of Rs.1,50,000/=. The Tribunal found that the accident occurred due to the negligence of the first respondent. Insurance company (R3) was directed to deposit the amount. However, only Rs.24,950/= was awarded as compensation. Only quantum of compensation is disputed in this appeal. Hence, we are considering that aspect alone in this appeal.

2. Appellant was aged 30 at the time of the accident. According to him, he was a coolie. The accident occurred on 29.12.1991. The Tribunal fixed only Rs.1,000/= as monthly wages. He was an able bodied man maintaining a family. When second schedule was framed in 1994, the notional income of a non-earning person was fixed as Rs.1,250/=

(Rs.15,000/= per year). It is true that the accident occurred on 29.12.1991. Appellant is not a non-earning person, but, is an earning person. In the above circumstances, we are of the opinion that at least Rs.1,250/= should be fixed as monthly income. He was aged 30 at the time of the accident. It was repeatedly held by the Apex Court that multiplier has to be fixed taking guidance from the second schedule. A three member bench of the Supreme Court in ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451) held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under Section 163A, but, it serves as a guideline for determination of compensation under Section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In ***United India Insurance Co Ltd.*** v. ***Patricia Jean Mahajan and others*** (JT 2002 (5) SC 74), the Apex Court held that, except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to the introduction of the multiplier system, were held to be no more good system. It was

further held that normally the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In ***Abati Bezbaruah*** v. ***Dy.Director General, Geological Survey of India and another*** ((2003) 3 SCC 148), it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of Section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed. If that be so, 17 is the apt multiplier.

3. Now, we will come to the disabilities occurred to the appellant due to the accident. He was treated as an inpatient for 13 days in the Medical College Hospital, Calicut. Subsequently also he has undergone treatment. Disability certificate was issued by Dr.C.C.Suresh M.S., Department of Surgery, Medical College Hospital, Calicut which was marked as Ext.A5. The above certificate reads as

follows:

> "Certified that I have today examined Sri.Moosa 30 years who was under my treatment from 29.12.91 as IP 59313 following an alleged traffic accident which occurred on 29.12.91 following which he was admitted at MCH Calicut after reference from KPM Hospital, Malappuram and he was having Head Injury with CT proved communited depressed fracture of Right frontal base and was discharged on 6.1.92 with an advice of long term Anticonvulsant drugs. As he is now having recurrent Headache and occasional epileptic fits which can be due to the post traumatic sequelae. So, I consider that the above patient is having a permanent disability of about fifteen percent."

According to the doctor, appellant has 15% disability. Appellant also has a case that due to the accident he developed depressive mood and he was treated by Dr.D.Sreekumar, Associate Professor of Psychiatry, Government Health Centre, Calicut. Ext.A8 shows that he has developed organic mood disorder. On the basis of the certificates produced (Exts.A5 and A8), compensation was not calculated on a scientific basis, but, only Rs.7,500/= was granted as compensation for disability and loss of earning power. Ext.A5 certificate shows that he is having epilepsy due to the accident. There was head injury. The

doctor certified 15% disability. Considering Ext.A5 certificate and the nature of his job, we take 10% disability. If that be so, compensation payable will be Rs.15,000 x 17 x $\frac{10}{100}$ = 25,500/=. The Tribunal has awarded only Rs.7,500/= for disability and loss of earning capacity. Hence, the claimant is entitled to an additional amount of Rs.18,000/= on this count. For disfigurement and loss of teeth, the Tribunal has awarded Rs.2,000/=. We are not interfering with the same. We have taken Rs.1,250/= as monthly income. For loss of earnings for the period he was actually bed ridden, the Tribunal has given Rs.3,000/=. Since we have taken Rs.1,250/= as the monthly income, he is entitled to an additional amount of Rs.750/= under that head. It is the case of the appellant that the entire medical bills were not produced. The medical certificates show that he needs continuous treatment. He has also produced various medical bills to show that even now he is continuing treatment. Medical bills for only Rs.656/= was produced before the Tribunal. But, the Tribunal found that during the period of treatment all the medical bills cannot be produced and the amount awarded for medical expenses was Rs.1,500/=. Considering the future treatment and nature of head injury, we are granting an additional

amount of Rs.5,000/= for medical expenses and future medical expenses. Even though it is contended that compensation awarded under other heads are also very meagre, we are not giving any enhancement under other heads. Therefore, the appellant is entitled to an additional amount of Rs.23,750/=. The above amount of Rs.23,750/= should be deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, with 8% interest from the date of accident till its deposit. Since the accident occurred in 1991 and considering the age of the appellant etc., on deposit of the amount, the appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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